
Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Part 1 of the Commission's) WT Docket No. 08-61
Rules Regarding Environmental Compliance) WT Docket No. 03-187
Procedures for Processing Antenna Structure)
Registration Applications)
)
Wireless Telecommunications Bureau Invites) DA 11-558
Comment on Draft Environmental Notice)
Requirements and Interim Procedures)
Affecting the Antenna Structure Registration)
Program)

To: Chief, Wireless Telecommunications Bureau

COMMENTS OF THE INFRASTRUCTURE COALITION

Michael F. Altschul
Andrea D. Williams
Christopher Guttman-McCabe
Brian M. Josef
CTIA-THE WIRELESS ASSOCIATION®
1400 16th Street, NW, Suite 600
Washington, DC 20036
(202) 785-0081

Jane E. Mago
Jerianne Timmerman
Ann West Bobeck
NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, NW
Washington, DC 20036
(202) 429-5430

Jim Goldwater
NATIONAL ASSOCIATION OF
TOWER ERECTORS
345 South Patrick Street
Alexandria, VA 22314
(703) 836-3654

Jonathan Campbell
PCIA-THE WIRELESS INFRASTRUCTURE
ASSOCIATION
901 N. Washington St., Suite 600
Alexandria, VA 22314
(800) 759-0300

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EXECUTIVE SUMMARY

The Infrastructure Coalition applauds the FCC for its efforts to create a revised Antenna Structure Registration (“ASR”) process that will comply with the D.C. Circuit’s *American Bird Conservancy, Inc. v. FCC* decision by establishing a clear, finite process affording an opportunity to comment that minimizes delay as much as possible. The proposed rules build on the Memorandum of Understanding executed by the Infrastructure Coalition and the Conservation Groups concerning an interim ASR processing procedure. The Coalition offers herein a number of enhancements to the procedure outlined in the *Public Notice*.

Local and National Notice. The Coalition is concerned that the FCC’s Local Notice may be out of sync with separate local zoning comment periods and thus possibly require multiple local notice publications. Moreover, if the National Notice date is not known when the Local Notice is published, the local publication will not be able to specify when to file with the FCC. The solution to these problems is for the FCC to: a) allow the Applicant to select a National Notice date when the Initial Submission is filed; b) then confirm the date; and c) assign a file number. The Applicant could then include this useful information in its Local Notice.

Requests for Environmental Processing (“REPs”).

- The intricacies of the FCC’s computation of time rule may result in confusion if members of the public are left to determine the filing dates for REPs and responsive pleadings. The solution to this problem is for the FCC to establish fixed calendar dates for the filing of REPs and responsive pleadings when it assigns the National Notice date.
- The proposed rules are ambiguous about whether REPs and responsive pleadings are to be filed electronically or in paper form. Paper filings will result in delay and confusion whereas these undesirable outcomes could be avoided if the FCC were to require electronic filing for all of these submissions. Likewise, service of filings should be electronic. The public is very familiar with electronic filing systems, and the FCC is moving toward a “comprehensive filing electronic regime.” There should be no option to file in paper form except in cases of confidentiality or hardship. The proposed rules give the Bureau the discretion to specify that filings must be electronic when it issues its public notice regarding procedures.
- The FCC should reduce the notice period for filing REPs from 30 to 15 days after National Notice.
- The FCC should also clarify that REPs are only to be filed for environmental issues, and frivolous or irrelevant filings will not be considered. It is important that the FCC make clear that REPs must meet the requirements of Section 309(d) for petitions to deny. Moreover, the FCC should clarify that the record will be closed once a reply is filed.

Processing Timetable. Because the opportunity for comment will increase the time for action on all REPs from 24 hours to a month or more, the FCC should undertake all reasonable efforts to pare down processing time. To that end, the FCC should provide benchmarks for how long it will take: (a) to determine whether the ASR can be submitted or an Environmental Assessment (“EA”) will be required; (b) to review an EA and either issue a Finding of No

Significant Impact (“FONSI”) or determine that there will be a significant environmental impact requiring an Environmental Impact Statement (“EIS”); and (c) to allow submission of an ASR when no REP is filed.

Consideration of Burdens Under the Paperwork Reduction Act (“PRA”). The PRA requires the FCC to assess burdens, and seek to minimize them, through a 60-day notice period and other procedures that must be completed *before* the FCC adopts a paperwork requirement. Moreover, it makes sense to engage the public about streamlining the process before finalizing the rules and other guidance. Accordingly, the Coalition urges the Bureau to publish the 60-day notice before issuing the Order.

Prompt Issuance of the Bureau Procedural Public Notice. Because broadcasters, wireless operators, and tower companies will need to modify many of their internal procedures to comply with new interim ASR rules and procedures, the Bureau should issue the Public Notice providing further guidance concerning those procedures as promptly as possible after the Order and well in advance of the effective date of new rules.

Elimination of Conflict between Proposed Rule and Existing Environmental Rule. The FCC’s existing environmental rules provide that an EA is required when there *may* be a significant environmental impact. When the FCC evaluates an EA, the rules require the FCC to determine whether the proposal *will not* have a significant impact (and issue a FONSI), or in the alternative, that it *will* have a significant impact (and require an EIS). However, the proposed rules provide that the FCC, when evaluating an EA, determines whether the proposal *will not* or “*may*” have a significant impact. This appears to be inconsistent with the existing rules. The FCC should revise the proposed rules to be consistent with the existing rule, which requires that the evaluation of an EA determine whether or not there “will” be a significant impact.

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COMMENTS OF THE INFRASTRUCTURE COALITION

CTIA–The Wireless Association[®], the National Association of Broadcasters, the National Association of Tower Erectors, and PCIA–The Wireless Infrastructure Association (collectively, the “Infrastructure Coalition”) hereby submit comments in response to the Wireless Telecommunications Bureau’s *Public Notice* seeking comment on proposed interim rules for the Antenna Structure Registration (“ASR”) process.¹

I. INTRODUCTION

The Coalition applauds the FCC for its efforts to create a revised ASR process that will comply with the D.C. Circuit’s decision in *American Bird Conservancy, Inc. v. FCC*, 516 F.3d 1027, 1035 (D.C. Cir. 2008) that required the FCC to provide an appropriate opportunity for

¹ *Wireless Telecommunications Bureau Invites Comment on Draft Environmental Notice Requirements and Interim Procedures Affecting the Antenna Structure Registration Program*, WT Docket Nos. 08–61 & 03–187, *Public Notice*, 26 FCC Rcd 4099 (WTB 2011), *summarized*, 76 Fed. Reg. 18679 (Apr. 5, 2011) (“*Public Notice*”). The version released by the Commission and the version published in the Federal Register use different numbering conventions for the same rule subsections. To avoid confusion, these comments will cite proposed rules using the numbering convention found in the FCC-released version.

public input in the environmental review process. The proposed rules in the *Public Notice* reflect, in many respects, the principles contained in the Memorandum of Understanding executed by the Infrastructure Coalition and the Conservation Groups concerning some of the elements of an appropriate interim procedure for processing ASR filings.² After reviewing the Public Notice, we believe that the few minor clarifications and enhancements proffered below will result in a more efficient and expeditious ASR process without negatively affecting the public's ability to participate.

These proposals are based on two bedrock principles: (1) the ASR rules should be designed to create a clear, finite process that affords the public a meaningful opportunity to comment on environmental issues;³ and (2) in light of the pressing need to deploy facilities for new and additional broadcast, wireless broadband, and public safety services, it is essential that the Commission explore all proposals that would minimize the ASR process timeline as long as they do not violate the first principle.⁴ Only by adherence to these two principles can the ASR rules simultaneously pass judicial muster and further the goals of the President, Congress and the FCC.

² See "Memorandum of Understanding between the Infrastructure Coalition and the Conservation Groups concerning Interim ASR Standards," Attachment to Letter from William J. Sill and Greer S. Goldman to Marlene H. Dortch, Secretary, WT Docket Nos. 08-61 & 03-187 (May 4, 2010) ("MoU"), available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020445454>.

³ See *Public Notice*, 26 FCC Rcd at 4099 ("These draft rules and procedures are intended to further the Commission's implementation of the National Environmental Policy Act (NEPA) while preserving the ability of communications providers rapidly to offer innovative and valuable services to the public.") (footnote omitted).

⁴ See generally Prepared Remarks Of Chairman Julius Genachowski, Broadband Acceleration Conference, Washington, D.C., at 4 (Feb. 9, 2011), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0209/DOC-304571A1.pdf; Memorandum from Tom Wheeler, Chairman, Technical Advisory Council, Technical Advisory Council Chairman's Report, at 2 (Apr. 22, 2011), available at http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0425/DOC-306065A1.pdf.

II. DISCUSSION

A. CLARIFICATION OF THE LOCAL AND NATIONAL NOTICE PROCESS

The Infrastructure Coalition is concerned that complicated, non-synchronized comment cycles might result, given separate local zoning comment cycles and FCC-required Local Notice proceedings. Proposed rule 17.4(c)(3) would require an applicant to publish a Local Notice for nearly every new or modified antenna structure proposal, in addition to the National Notice provided by the Commission under proposed rule 17.4(c)(4). Because the rule states that the National Notice will be on or after the date of the Local Notice, it may become necessary to publish multiple notices locally, despite the Commission's expectation that the Local Notice could in some cases be combined with a local zoning notice. If the applicant does not know when the National Notice will occur prior to publishing the Local Notice, it will not be possible for that Local Notice to provide the deadline for filing Requests for Environmental Processing ("REPs"). This would limit the Local Notice to generally advising the public to monitor the Commission's website for the National Notice. As a result, it might be difficult or impossible to synchronize the local zoning comment cycle with the FCC-required Local Notice, and the FCC Local Notice might have to be published separately from the local zoning public notice.

There is a simple solution to this that does not require any change to the proposed rules and can be accomplished in a purely procedural manner. Specifically, the FCC should allow the Applicant to select a preferred date for the National Notice when the Initial Submission is filed, advising the Applicant to select a date on or after the Local Notice date. As part of the Initial Submission process, the Commission's ASR processing web application ("ASR WebApp") would confirm the requested National Notice date.⁵ The ASR WebApp also could provide the

⁵ As discussed in II. B., the ASR WebApp should also be configured to calculate the filing date for the REP, the Opposition and the Reply.

Applicant with a file number for the Initial Submission. Armed with this information, the Applicant could integrate it into its Local Notice and provide meaningful guidance to the public.

B. FILING AND PROCESSING REQUESTS FOR ENVIRONMENTAL PROCESSING (REPs)

1. The FCC's ASR Web Application Should Specify the Filing Dates for REPs, Oppositions, and Replies When an Initial Submission is Filed

There is a potential for public confusion regarding filing dates for REPs, Oppositions, and Replies if the FCC relies on the public to compute time pursuant to Section 1.4 of the Commission's rules, 47 C.F.R. § 1.4. Section 1.4 has many nuances (*e.g.*, different methods for calculating due dates based upon the number of days or the type of filing involved) that may not be obvious or might confuse members of the public not accustomed to the Commission's complex computation of time rules.⁶ As a result, there may be attempts to file REPs, Oppositions, and Replies after the appropriate deadline. Moreover, if paper filings are permitted, the rules become even more challenging, and if properly followed, further attenuate the filing process. Section 1.4(h) allows an additional three days for all responsive filings if the document is served by mail, which would have the unintentional consequence of elongating the simple and speedy 10- and 5-day deadlines for Oppositions and Replies under proposed rule 17.4(c)(5)(A).⁷

There is a straightforward solution to this potential for confusion: The ASR WebApp should establish fixed calendar dates not only for the National Notice, but also for the filing of REPs, Oppositions, and Replies. These dates would obviate the need for members of the public

⁶ For example, a 5-day period and a 10-day period are not counted the same way, because weekends and holidays are not counted if the period is less than 7 days. *See* Section 1.4(g). As a result, a 5-day period could actually last 10 days if there is a holiday involved.

⁷ As a result of these complexities and variables, it is foreseeable that the FCC would receive a number of late-filed filings which, if returned, would result in requests for consideration as late filed pleadings.

to attempt to follow Section 1.4 of the rules and would also eliminate any variability due to service. The Applicant could then include these fixed dates in the Local Notice and the Commission would then reiterate them in the National Notice.

2. Specify that Electronic Filing of REPs and Pleadings Is Required

The proposed rules are ambiguous concerning the manner in which REPs and pleadings are to be filed. On the one hand, proposed rule 17.4(c)(5) would leave the manner of filing to be determined by the Bureau and set forth by Public Notice. Consistent with this, there is no indication in the proposed rules regarding how an Opposition or a Reply is to be filed. However, proposed rule 17.4(c)(5)(B) states that an REP is to be filed “either electronically or by hard copy.” The latter provision is ambiguous, in that it may represent guidance to the Bureau in crafting its procedural public notice, or it could alternatively be read as ensuring a prospective filer’s right to choose which way to file.

The use of paper filings will result in significant delay and confusion. REPs, Oppositions, and Replies submitted by mail must undergo a security screening and may not reach the Bureau staff for several days, or more. Electronically filed REPs and responsive pleadings, on the other hand, would be available to the staff instantaneously after submission. As a result, the staff would be able to verify without delay whether an REP was filed electronically or not, and processing could be expedited, whereas confirmation whether a paper filing was made (or not made) is guaranteed to take far longer (anywhere from several days to over a week) as the filing would be subjected to screening procedures before being manually delivered to the staff.

The solution to these delay-inducing problems is to require electronic filing for REPs, Oppositions, and Replies. The public is increasingly familiar with filing electronically.

Members of the public routinely use FCC websites to electronically file “brief comments” in the Electronic Comment Filing System (“ECFS”), ECFS Express,⁸ or via Regulations.gov, and to file informal complaints through the CGB website.⁹ Further, electronic filing has increased, rather than decreased, participation by the public in many FCC proceedings (e.g., the 100,000 plus filings by individuals in the Open Internet docket).¹⁰ Likewise, the instant avian conservation dockets provide additional evidence of the public’s ability to utilize electronic filing as numerous individuals electronically filed their own comments or brief comments.¹¹

The overhaul of the ASR system provides the FCC with the opportunity to utilize the public’s increased familiarity with online filings to garner the public interest benefits of a system based upon electronic filing. This concept is not unique. In fact, it is a cornerstone of the Commission’s Data Innovation Initiative, under which the ECFS will provide access to non-docketed as well as a wider range of docketed proceedings.¹² In fact, the Commission has, as part of the same initiative, said that it intends to mandate electronic filings in virtually every type of proceeding, with the objective of a “comprehensive electronic filing regime,” with paper filings only when there are technical difficulties, unique burdens, or other public interest reasons

⁸ ECFS Express is located at <http://fjallfoss.fcc.gov/ecfs/hotdocket/list>.

⁹ The CGB “File a Complaint” form is located at <http://esupport.fcc.gov/complaints.htm>.

¹⁰ See *Preserving the Open Internet*, GN Docket No. 09–191 (114,110 total filings as of May 1, 2011, over 100,000 of which were “brief comments,” with over 10,000 filed on a single day).

¹¹ As of May 2, 2011, WT Docket No. 03–187 had 2840 total filings, including 339 “brief comments”; and WT Docket No. 08–61 had 108 total filings, including 9 “brief comments.”

¹² *Amendment of Certain of the Commission’s Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, GC Docket No. 10–44, *Report and Order*, 26 FCC Rcd 1594, 1597-1602 (2011) (“*Part 1 Order*”); see also FCC, News Release, *FCC Advances Data Innovation Initiative* (Feb. 8, 2011), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-304518A1.pdf.

militating against electronic filing.¹³ The Commission said that as new filing systems outside ECFS are considered, it will address whether they should be all-electronic.¹⁴

Consistent with this approach of relying on electronic filing and access whenever feasible, the newly revised *ex parte* rules will require all *ex parte* filings to be submitted in electronic form; there will be no paper filing option, except for filings subject to confidentiality restrictions or when a “hardship exemption” is justified. The Commission stated:

Electronic filing is fast and cost-efficient for the parties and the Commission, and is widely used in the federal courts. . . . As the court rules also provide, we will grant exceptions to the electronic filing requirement for parties unable to comply by reason of hardship. A party claiming a hardship exemption must state the basis for its claim in the notice.¹⁵

This same approach should be followed here, consistent with the presumption of the desirability of an all-electronic filing scheme which underlies the *Part 1 Order*. Moreover, we believe that proposed rule 17.4(c)(5)(B) was intended to give the Bureau the discretion to determine what form of filing is most appropriate, and that the Bureau can communicate that either in its Order or in the procedural public notice that is envisioned in Section 17.4(c)(5). The Bureau could state in its procedural Public Notice that the same standards for the hardship exemption contained in the *ex parte* rules¹⁶ would be employed if a paper filing seeks a hardship exemption.

¹³ *Part 1 Order*, 26 FCC Rcd at 1600 ¶ 15.

¹⁴ *Id.* at 1601 ¶ 18.

¹⁵ *Amendment of the Commission’s Ex Parte Rules and Other Procedural Rules*, GC Docket No. 10–43, *Report and Order and Further Notice of Proposed Rulemaking*, 26 FCC Rcd 4517, 4531 ¶ 52 (2011).

¹⁶ *See id.* at 4545-50, App. A, ¶ 8, in particular the prospective amendment to 47 C.F.R. § 1.1206(b)(2)(i).

To garner the well documented benefits of electronic filing, parties should be required to employ electronic service of REPs, Oppositions, and Replies. Proposed rule 17.4(c)(5)(A) requires service to be pursuant to Section 1.47 of the Rules, which *currently* requires service in paper form unless the party to be served has agreed to accept electronic service. However, on June 1, when the *Part 1 Order*'s revision of Section 1.47 becomes effective, that rule will permit electronic service whenever the Commission requires service of documents in FCC proceedings.¹⁷ A note to the rule also grants the staff "the authority to decide upon the proper format for electronic notification in a particular proceeding."¹⁸ Thus, the Public Notice will be able to require electronic service and detail the means by which electronic service is to be given, (*e.g.*, attaching a copy to the email or including a link to the filing in the ASR system).

3. The Public Notice Period Should be Reduced

Proposed rule 17.4(c)(5) states that REPs must be filed no later than 30 days from the National Notice date. This will add a *minimum* of 30 days to the current processing time (typically less than 24 hours) for virtually all ASRs.¹⁹ Even more time would be required if a REP is filed.

As a partial antidote for this elongated process, the Commission can, without adversely affecting the public's right to comment, shorten the public notice period from 30 days to 15 days.

¹⁷ The *Part 1 Order* said that such decisions would not require notice-and-comment rulemaking, as they are purely procedural. *See* 26 FCC Rcd at 1598 & n.23, 1600 & n.44

¹⁸ 47 C.F.R. § 1.47(a) Note, as amended by *Part 1 Order*, 26 FCC Rcd at 1624.

¹⁹ A limited number of categories of minor ASR filings would be exempt from the environmental notice and processing procedures. *See* proposed rule 17.4(c)(1).

This is far from unprecedented, as the FCC has established many other public notice mechanisms that provide for substantially shorter public notice and comment periods.²⁰

Reduction of the REP public notice period to 15 days would allow more efficient processing, and still provide adequate time for filing REPs, given that the period will be computed from the National Notice, which will, as a practical matter, be later than the Local Notice. Thus, the public will be notified by the earlier Local Notice of the specifics of the tower and will be able to begin preparing a REP while they await the FCC National Notice. A two week reduction in the ASR timeline would constitute a substantial time saving that FCC applicants could use to speed the provision of new services and improved coverage by broadcasters and wireless carriers, the rollout of wireless broadband and voice services in unserved and underserved areas, and the buildout and operation of broadband public safety networks.

4. Clarify the Scope of REPs

While it is clear that proposed rule 17.4(c)(5)(B) is intended to limit the scope of a REP to environmental issues,²¹ the Coalition is concerned that, absent additional Commission efforts, the public may not fully understand . As a result of the local public notice being a vehicle to alert the public that a filing may be made at the FCC, the public may mistakenly file a REP that

²⁰ See, e.g., 47 C.F.R. § 61.21(c) (minimum of one day’s notice for nondominant carrier tariffs); *id.* § 61.58 (minimum notice requirements for dominant carrier tariffs of 1, 3, 7, 15, or 16 days for various types of filings); *id.* § 63.20 (minimum notice requirements for international Section 214 applications of 14 or 28 days).

²¹ According to proposed rule 17.4(c)(5)(B), a REP “must state why the interested person . . . believes that the proposed antenna structure or physical modification . . . may have a significant impact on the quality of the human environment . . . , or why an Environmental Assessment [(“EA”)] submitted by the prospective ASR applicant does not adequately evaluate the potentially significant effects of the proposal.”

raises non-environmental local issues. It would be both inefficient and inequitable for applicants to constantly have to file Oppositions to respond to such inappropriate REPs.

This undesirable drain on both the FCC's and the applicant's resources can be avoided, or at least minimized, if the FCC uses its public notices, its website, and public outreach materials to emphasize that REPs must be limited to environmental issues, and that frivolous or irrelevant filings will not be considered. If the staff discovers that an inappropriate REP has been filed, the staff should seek to dismiss the REP before the end of the 10 day Opposition period and notify the Applicant that no Opposition need be filed.

In addition, proposed rule 17.4(c)(5)(B) states that a REP must be submitted "as a written petition" but it does not make clear that the statutory requirements in 47 U.S.C. § 309(d) applicable to a Petition to Deny apply. As the filing of a REP will necessitate that the FCC and the Applicant expend sizeable resources, respectively processing and responding to the REP, the public interest would best be served by appropriately clarifying the elements that a REP must contain. In the Commission rule and the Order adopting the rule, as well as the Bureau's procedural Public Notice, the website, and in public outreach materials, the FCC also should make clear that REPs must meet the requirements of Section 309(d). As such, a REP must be factually supported and demonstrate a *prima facie* case as to why further environmental processing is necessary.

5. Clarify that the Record will be Closed Once a Reply Is Filed

The proposed rules are silent as to when the record will be considered closed. As a result, it is entirely foreseeable that in some cases, the ASR procedure will be indefinitely delayed by the filing of unauthorized rebuttals, further responses, and any number of additional unauthorized filings. This can easily be prevented without any need for further rules. The

Bureau procedural Public Notice concerning the filing process can establish a “date certain” when the record closes, after which the staff can initiate and complete their review of the record without concern that the process will be interrupted and delayed by untimely unauthorized filings. Attenuating the timeline in this manner undermines the very certainty that the proposed rules were designed to produce. To curtail the elongation of the timeline, the Commission should make clear that the record regarding a REP is closed immediately after the reply date, and state that further attempts to submit filings after that date will not be considered (or will be considered only if leave is granted based on extraordinary circumstances). By taking this action, the Commission will deter those that wish to ‘game’ the system by abusing it to slow down or halt tower siting by filing endless pleadings, while leaving sincere parties filing appropriate REPs unaffected.

C. THE FCC SHOULD ESTABLISH A REASONABLE TIMETABLE FOR PROCESSING AND DECISION

The proposed rules do not set a timeframe for the staff’s evaluation of the REP, Oppositions, and Replies, but it is clear that the ASR process will take more than a month to complete even if no REP is filed (unless the Commission reduces the public notice period as suggested above). In contrast, ASRs are currently processed in less than 24 hours in most cases. While the Coalition appreciates why the ASR process must be revised and that the current turnaround will no longer be possible, it does underscore both: (a) the magnitude of the delay; and (b) the need to minimize, wherever possible, the time it will take for an ASR to be processed to completion under the new rules. The communications industry needs to speed up the antenna siting process in order to continue to bring advanced broadcast communications services, such as emergency warnings and information, HD television, mobile DTV and HD radio services to the local communities they serve, expand the capacity and coverage of mobile broadband and voice

networks, build out 4G broadband, and deploy new public safety networks, as well as meet the FCC's construction benchmarks in these services. Accordingly, all reasonable efforts should be made to create a processing system that will pare down processing timeframes.

To this end, the Commission should provide benchmarks as to how long it will take: (a) after the filing of a Reply for the Commission's determination whether the final ASR can be submitted or whether an EA will be required; (b) to review an EA to determine whether to issue a finding of no significant impact ("FONSI") or determine that the application will have a significant environmental impact requiring an Environmental Impact Statement ("EIS"). Moreover, when no REP is filed, the Commission should immediately notify an applicant that it can finalize its Initial Submission and file it as an ASR unless the Commission sets it aside for further review within a brief fixed period of time, such as one business day after the deadline for the filing of REPs has passed.

D. BEFORE FINALLY ADOPTING RULES, THE FCC SHOULD CONSIDER THE BURDENS IMPOSED BY THE REVISED ASR FILING PROCESS

The Paperwork Reduction Act ("PRA") requires the FCC to assess the burdens of its proposed rules, and to seek to minimize them, *before* it adopts a Collection of Information. It provides that "[a]n agency shall not conduct or sponsor the collection of information unless *in advance of the adoption . . . of the collection of information,*"²² the agency, among other things, provides a 60-day notice period soliciting comment regarding the need for the collection, the agency's estimate of the burdens the collection would impose, enhance the utility of the information to be collected, and "minimize the burden . . . on those who are to respond, including through the use of automated collection techniques or other forms of information

²² 44 U.S.C. § 3507(a).

technology.”²³ Moreover, it simply makes good sense to engage the public about streamlining the process before finalizing the rules and the Bureau’s procedural Public Notice. Broadcasters, wireless companies, public safety organizations, and tower companies will need to adapt their current siting practices to the procedures to be adopted in this proceeding and should have a meaningful opportunity to comment on the Commission’s burden estimate and suggest ways to minimize the burdens while still achieving the Commission’s other objectives. Accordingly, the Coalition urges the Bureau to publish the 60-day PRA notice in the Federal Register prior to issuing the Order.²⁴

E. IT IS IMPORTANT TO ISSUE THE WTB PROCEDURAL PUBLIC NOTICE PROMPTLY AFTER THE ORDER IN THIS PROCEEDING

As discussed in connection with the PRA, the broadcast and wireless industries will have to adapt their present siting practices and procedures to accommodate the new rules. If the Bureau’s procedural Public Notice is released on or near the eve of the effective date of the rules,

²³ 44 U.S.C. § 3506(c)(2)(A) (the 60-day public notice is required for collections of information not contained in a notice of proposed rulemaking, as is the case here). In addition, before an agency adopts a collection of information it must complete the rest of the PRA process, including submission to OMB, establishment of a 30-day notice period, and obtain OMB approval. 44 U.S.C. § 3507(a)(1)(C)-(D), (2)-(3). It is worthy of note that the first reason given by OMB for its disapproval of the Commission’s backup power rules was that the Commission “did not . . . seek and evaluate public comment on this reporting requirement in advance of the adoption of the collection of information,” in violation of § 3507(a). Office of Information and Regulatory Affairs, OMB, Information Collection Review Disapproval (Nov. 28, 2008), http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200802-3060-019.

²⁴ The Coalition notes that it is not possible at this time to assess the usefulness of, or the burden imposed by, some of the proposed rules, and that the PRA process will provide an opportunity to review them in more detail. For example, proposed rule 1.923(d) would require a wireless applicant filing an application for facilities that do not require an ASR number to “provide information in its application sufficient for the Commission to verify this fact.” Whether this is objectionable depends on what must be supplied as well as the disclosure of the need for such verification. A self-certification would be far less burdensome than a requirement to supply pages of documentation. The PRA notice and comment proceeding will be an appropriate place to address such requirements.

the industry will be unable, in a timely manner, to adjust its processes to accommodate any new information contained in the Public Notice. It is critical that the WTB procedural Public Notice follow quickly on the heels of the Interim Rules, well in advance of the need for compliance, so that the industries have a complete understanding of the rules and policies at an early date.²⁵

F. THE FCC SHOULD ELIMINATE A PERCEIVED CONFLICT BETWEEN PROPOSED RULE 17.4(C)(8) AND EXISTING RULE SECTION 1.1308

Proposed rule 17.4(c)(8) states that when the FCC evaluates an EA, it will either issue a FONSI or conclude that the proposal “may” have a significant environmental impact. As written, this appears to conflict with the plain meaning of current Section 1.1308.²⁶ Section 1.1308(a) requires an EA when a proposal “may” have a significant environmental impact. Under Section 1.1308(c)-(d), when the FCC evaluates an EA, it must then determine either that the proposal *will not* have a significant impact and issue a FONSI, or that it *will* have a significant impact, in which case an EIS becomes necessary, unless the applicant is able to avoid or mitigate the impact by amending the application. Section 1.1308 is consistent with NEPA, which requires a “detailed statement” — *i.e.*, an EIS — only for actions “significantly affecting the quality of the human environment.”²⁷

To eliminate the apparent contradiction between the proposed rule and Section 1.1308, the Commission should revise proposed rule 17.4(c)(8) to comport with Section 1.1308 and provide that the requisite determination is whether or not there “will” be a significant impact.

²⁵ The PRA would be as applicable to new information requirements found in the Public Notice as it is to the Order. Thus, it will be important that either: (a) the Public Notice require no new collection of information; or (b) that the new information collection requirement be subjected to the PRA process prior to the issuance of the Public Notice.

²⁶ 47 C.F.R. § 1.1308.

²⁷ 42 U.S.C. § 4332(C).

Alternatively, the Commission could clarify in the Order promulgating its rules that “will” is the appropriate standard and that the FCC used “may” in Section 17.4(c)(8) only to reflect that an Applicant has the option to mitigate the impact of the proposal by amending its application.

III. CONCLUSION

For the foregoing reasons, the Infrastructure Coalition urges the Commission to refine its proposals as described herein.

Respectfully submitted,

THE INFRASTRUCTURE COALITION

/s/ Brian M. Josef

Brian M. Josef
Michael F. Altschul
Andrea D. Williams
Christopher Guttman-McCabe
CTIA–THE WIRELESS ASSOCIATION®
1400 16th Street, NW, Suite 600
Washington, DC 20036
(202) 785-0081

/s/ Ann West Bobeck

Jane E. Mago
Jerianne Timmerman
Ann West Bobeck
NATIONAL ASSOCIATION OF BROADCASTERS
1771 N Street, NW
Washington, DC 20036
(202) 429-5430

/s/ Jim Goldwater

Jim Goldwater
NATIONAL ASSOCIATION OF
TOWER ERECTORS
345 South Patrick Street
Alexandria, VA 22314
(703) 836-3654

/s/ Jonathan Campbell

Jonathan Campbell
PCIA–THE WIRELESS INFRASTRUCTURE
ASSOCIATION
901 N. Washington St., Suite 600
Alexandria, VA 22314
(800) 759-0300

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